his full approval, and from this a pre-arranged plan is an irresistible inference.

The first appellant has placed the entire blame on the second appellant and has attempted to show that it was the second appellant who was the master-planner of this horrible crime. In our view, the part played by the first appellant from the time of his persuading the cashier to take a lift in his car to the moment when he took possession of the whole proceeds of the robbery (except for the few dollars he gave the second appellant) shows clearly that it was he and not the second appellant who was the directing mind.

Certain passages in the summing-up have been criticised, but looking at the summing-up as a whole, we consider that correct directions on the evidence and the law were given, and the assessors were left in no doubt as the meaning of the questions of fact on which their opinions were required. In our view, no other verdict on the evidence was possible. and the appeals are accordingly dismissed.

Appeals dismissed.

Solicitors for the appellants: *Braddell & Ramani; R. P. S. Rajasooria & Eugene Lye.*

SINNASAMY v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Wilson and Good JJ.) December 12, 1955]

[K. L. — F.M. Criminal Appeal No. 69 of 1955]

Penal Code ss. 84 & 302 — Murder — Defence of automatism — Irresistible impulse — Failure to call witness who might have been produced — Evidence Ordinance, 1950, s. 114(g).

This was an appeal against the conviction of the appellant for the murder of his daughter aged 21 months. The medical evidence called at the trial showed that the appellant was an epileptic. The Medical Officer called at the trial further stated that automatism is associated with some cases of epilepsy and that a person acting under a state of automatism would not be conscious at the time. The appellant in his evidence showed that he had a clear recollection of the events. The defence was that the appellant did the act when in a state of automatism.

Held: (1) the onus was on the appellant to bring himself within the exception set in s. 84 of the Penal Code and on the facts of the case the learned trial Judge was right in holding that he had failed to do so; (2) irresistible impulse *per se* is no defence and can only be a defence when it is proved to have been a result of insanity in law, the onus of proving this lay on the appellant and he did not succeed in discharging it.

Semble: the failure to produce a witness, a six year child in this case, could not have affected the decision since on the evidence the conclusion that it was the appellant who killed the child was inescapable.

COURT OF APPEAL.

R. G. Ritchie for the appellant.

J. G. Adams (Federal Counsel) for the respondent.

Good J. (delivering the judgment of the Court): — This is an appeal against the conviction of the appellant for the murder of his daughter aged twenty-one months. The facts are not in dispute, nor is there any material discrepancy between the evidence for the prosecution and the evidence of the accused. There is no discoverable motive for the killing of the child. The appellant, though he remembered in considerable detail the events and circumstances immediately preceding and immediately following the act, maintained that he had no recollection of the act itself or why he did it.

There is a medical history based on the evidence of the mother of the child, with whom the appellant had been living for ten years and by whom he had had three children. Her evidence was unrefuted, and can be taken as having been accepted. In the light of that evidence, and of a report by a doctor who had previously had the appellant under observation, and of a brief examination during the trial, a specialist in mental disorders testified that the appellant is an epileptic.

The defence was that the appellant did the act when in a state of automatism, which is a temporary loss of consciousness associated with some types of epilepsy. The onus was on the appellant to set up this defence, and the question is, whether he has succeeded in bringing himself within the exception set out in section 84 of the Penal Code.

Mr. Ritchie, who argued this appeal most ably on behalf of the appellant, based his arguments on two main grounds (grounds 1 and 2 of the Further grounds of Appeal) which may be summarised thus :—

That the appellant, if he did the act, may have done it in a state of automatism, which would bring him within section 84 of the Penal Code; and that the prosecution failed to prove the necessary intention or knowledge to support a conviction for murder.

In the course of his argument he criticised the judgment of the learned trial judge in two respects :—

Where in disagreeing with the assessors, he says that their answers to the questions put to them were completely contrary to the medical evidence; and where he refers to the learned Deputy Public Prosecutor's suggestion that the appellant killed his child on an irresistible impulse possibly caused by the children annoying him for a moment.

As regards the first main ground of appeal, and the objection to the passage in the judgment which is connected with it, we are of the opinion that the learned trial judge was right in his conclusion. The doctor, while accepting that the appellant was an epileptic and that automatism is associated with some cases of

epilepsy, stated unequivocally that a person acting under a state of automatism will not be conscious at the time. Turning to the appellant's own evidence, we find that he had the clearest recollection, going into considerable detail, of the events surrounding the act of killing: he remembered leaving his place of work to go to his quarters to get a drink, meeting his youngest child on the way and taking her with him, unlocking the door and entering the house where he noticed that the two elder children had followed him, letting go the youngest child and snatching up the knife, holding her behind him with one hand while he held the knife in the other, hearing the eldest child ask "what is the matter" and replying to her "wait", seeing the blood in the kitchen in front of the back door, feeling concerned at having left his work before the proper time, and locking up the house again and returning to his work. The doctor was not, perhaps, questioned in as much detail as might have been desirable on the form of unconsciousness associated with automatism, but it is difficult to see how, in face of the appellant's own evidence, the assessors could reasonably have found that the appellant was in a state of unconsciousness when he did the act, and in our view, the learned trial judge, in his summing-up, was right in rejecting the defence of automatism in favour of the theory that the appellant acted on an irresistible impulse.

Once the defence of automatism failed, there were only two alternatives left: that the appellant killed his child on an irresistible impulse or that he killed her for an undisclosed reason; the second alternative is, on the evidence of the appellant's temperament and his relations in general with his children so remote that the only reasonable conclusion is that he acted on irresistible impulse. It was, perhaps, unnecessary for the learned Deputy Public Prosecutor to speculate as to the cause of the irresistible impulse, but we see nothing objectionable in his having suggested one. We would add that irresistible impulse *per se* is no defence, and can only be a defence when it is proved to have been the result of insanity in law. The onus of proving this lay on the appellant and, in our view, he did not succeed in discharging it.

As regards the second main ground of appeal, having found that the appellant killed his child by inflicting upon her a deep wound in the throat with a knife which, as the doctor who held the post mortem examination described it, was "drawn a few times in the depth of the wound", and having reached the conclusion, as on the evidence he was bound to do, that the appellant was conscious of what he was doing, the learned trial judge could not reasonably have drawn any other inference from the evidence than that the appellant intended to kill and, in our view, the prosecution discharged any onus which lay upon them in this respect.

We do not regard any of the other grounds of appeal as having any weight. As to ground No. 3, the question whether the appellant did the act while suffering from an epileptic fit was considered, so far as it was material, in connection with the defence of automatism and, as we have said, was rightly dismissed. The evidence of Alamelu (P.W. 2) as to the nature of the fits from which the appellant suffered during the time they lived together is altogether inconsistent with his having been in the throes of such a fit when he killed the child. Ground 4 we have already disposed of in considering grounds 1 and 2. As to ground 5, the form of charge used in this case follows that set out in the Second Schedule to the Criminal Procedure Code, and section 443 of the Code permits it to be used. As to ground 6, while it is true that section 114(g) of the Evidence Ordinance, 1950 allows the Court to draw an inference unfavourable to the prosecution, from its failure to produce a witness who might have been produced, we do not consider that the failure to produce the six year old child in this case could affect the decision since on the evidence the conclusion that that it was the appellant who killed the child is inescapable.

For the reasons which we have given the appeal is dismissed.

Appeal dismissed.

GLENEAGLES HOTEL LTD. v. WONG JUE WHEE & 38 ORS.

[O. C. J. (Whitton J.) December 3, 1955]

[Singapore — Civil Suit No. 1427 of 1955]

Trade Disputes Ordinance, 1941, s. 5 — Industrial dispute — Picketing — Attending "at or near" a place where a person carries on business in furtherance of a trade dispute — Meaning of "at or near" — Contract of employment — Whether broken by workmen going on strike — Trade Union Ordinance, 1940, s. 20 — Labour Ordinance (Cap. 69), s. 8(5).

The plaintiff in this case was a company incorporated in Singapore which owns a hotel in Singapore. The defendants were members of the hotel service staff until August 26, 1955. On that day the defendants went on strike and did not return to work, but they continued to occupy the staff quarters on the premises until ordered by the Court to vacate them on an interlocutory application in this action. They also remained in the grounds of the hotel, and erected at the corner of a lawn in front of the hotel building, a tent which they or some of them occupied. They also erected and displayed "strike" banners and posters inside the grounds of the hotel. The